

## FLOW DOWN PROVISIONS

As a condition of working as an independent contractor and consultant for Mitchell International, Inc. dba MCN (collectively referred to as “Company”), compliance with the following flow down provisions is required.

Provider acknowledges that it has read and understands each of the incorporated clauses below. The FEHBAR and DOL clauses, as well as the entire Code of Federal Regulations, are available in full text at [www.gpo.gov/fdsys/browse/collectionCfr.action](http://www.gpo.gov/fdsys/browse/collectionCfr.action). The FAR and FEHBAR clauses are available in full text at [www.acquisition.gov](http://www.acquisition.gov) under either the “Federal Acquisition Regulation (FAR)” tab (which contains the most current FAR clauses) or the “Archives” tab (which contains prior versions) and from Participating Eligible Purchaser upon request. When using the electronic database, Provider is advised to be certain that the date of the FAR or FEHBAR clause appearing in this Addendum matches the date of the FAR or FEHBAR clause read in the database. This is important because the subcontract may incorporate a version of the FAR or FEHBAR clause that is older than the version that appears under the “Federal Acquisition Regulation (FAR)” tab in the database or the current version of the Code of Federal Regulations. For example, assume this subcontract incorporates a 2005 FAR clause but the current (or last version issued by the Government) is dated 2007. The 2005 FAR clause will be found only under the “Archives” tab.

Providers with any questions or objections are invited to contact the Physician Recruiting Department at 206.219.4941.

### **FAR Clause 48 CFR §**

1. 52.203-3 Gratuities (Apr 1984) (The provisions of this clause shall expressly apply to gratuities offered or given to Florida Blue officers, employees, or agents.)
2. 52.203-7 Anti-Kickback Procedures (June 2020) (If subcontract exceeds \$150,000 including paragraph (c)(5) but excepting paragraph (c)(1).)
3. 52.203-7 Anti-Kickback Procedures (May 2014) (If subcontract exceeds \$150,000 including paragraph (c)(5) but excepting paragraph (c)(1).)
4. 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (May 2014)
5. 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (September 2007) (If subcontract value exceeds \$150,000.)
6. 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (October 2010) (If subcontract value exceeds \$150,000.)
7. 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (June 2020) (If subcontract value exceeds \$150,000.) The substance of this clause, including this paragraph (g), incorporated into any subcontract that exceeds the threshold specified in FAR 3.808 on the date of subcontract award (which is currently \$150,000). Carrier must obtain a declaration, including the certification and disclosure in FAR 52.203-11(c) & (d), “Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions,” from each person requesting or receiving a subcontract exceeding the threshold specified in FAR 3.808 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration. A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by Carrier. Carrier shall, at the end of the calendar quarter in which the disclosure form is submitted by the

subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the Contractor or subcontractor that awards the subcontract.)

8. 52.203-13 Contractor Code of Business Ethics and Conduct (Jun 2020) (41 U.S.C. 3509) (If subcontract value exceeds the threshold specified in FAR 3.1004(a) on the date of subcontract award, and has a performance period in excess of 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.)
9. 52.203-13 Contractor Code of Business Ethics and Conduct (April 2010) (Incorporated into subcontract if subcontract value exceeds \$5,000,000 and has a performance period in excess of 120 days.) Suppliers shall provide written notice to BCBSA of all disclosures of violations of the civil False Claims Act or of Federal criminal law. BCBSA will serve as the point of contact with the OPM OIG.
10. 52.203-15 Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1153 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.
11. 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (April 2014)
12. 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Jun 2020) (The following language, including paragraph (c), must be incorporated into subcontract if it exceeds the simplified acquisition threshold as defined in FAR 2.101 on the date of the subcontract award, which is currently set at \$250,000). “(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908. (b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation. (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.”)
13. 52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017)
14. 52.204-7 System for Award Management (October 2016; October 2018)
16. 52.204-13 System for Award Management Maintenance (October 2018)
17. 52.204-21 Basic Safeguarding of Covered Contractor Information Systems (Jun 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.
18. 52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).
19. 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2020) (Section 889(a)(1)(A) of Pub. L. 115-232).

20. 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (August 2013) (If subcontract exceeds \$30,000 and is not for a commercially available off-the-shelf (COTS) item as defined in the FAR.)
21. 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (June 2020) (If subcontract exceeds \$35,000 and is not for a commercially available off-the-shelf (COTS) item as defined in the FAR.)
22. 52.215-2 Audit and Records – Negotiation (June 2020) (Incorporated into subcontract if it exceeds the simplified acquisition threshold, as defined in FAR 2.101 on the date of the subcontract award, and: (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract or any combination; (2) For which certified cost or pricing data are required; or (3) That require the subcontractor to furnish certain reports as discussed in paragraph (e) of this clause –(which require Supplier to furnish certain cost, funding, or performance reports). The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.)
23. 52.219-8 Utilization of Small Business Concerns (October 2014) (If the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (or \$1,500,000 for construction of any public facility), Subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.)
24. 52.219-8 Utilization of Small Business Concerns (October 2015) (Incorporated into subcontract expected to exceed \$700,000 (or \$1,500,000 for construction of any public facility), Subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities – unless the acquisition is set aside or is to be accomplished under the 8(a) program.)
25. 52.219-8 Utilization of Small Business Concerns (October 2018) (15 U.S.C. 637(d)(2) and (3)), If the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
26. 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (November 2016) (Incorporated into subcontract expected to exceed \$700,000 (or \$1,500,000 for construction of any public facility), Supplier must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities—unless the acquisition is set aside or is to be accomplished under the 8(a) program.)
27. 52.219-9 Small Business Subcontracting Plan (October 2015) (Incorporated into subcontract if subcontract offers further subcontracting opportunities and requires compliance with FAR 52.219-8; clause does not apply to small business concerns.) If Subcontractor is not a small business concern and subcontract exceeds \$700,000 (or \$1,500,000 for construction of any public facility), Subcontractor must include 52.219-9 in lower tier subcontracts that offer subcontracting opportunities – unless the acquisition is set aside or is to be accomplished under the 8(a) program.)
28. 52.219-9 Utilization of Small Business Concerns (November 2016) (Incorporated into subcontract expected to exceed \$700,000 (or \$1,500,000 for construction of any public facility), Supplier must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities—unless the acquisition is set aside or is to be accomplished under the 8(a) program.)

29. 52.219-16 Liquidated Damages – Subcontracting Plan (January 1999) (Incorporated into Subcontract if expected to offer subcontracting possibilities in excess of \$500,000 (\$1,000,000 for construction of any public facility) and FAR 52.219-9 is incorporated into Subcontract.)
30. 52.222-3 Convict Labor (June 2003) (Incorporated into Subcontract if the value of the Subcontract is above the micro-purchase threshold of \$2,500 if for construction subject to the Davis-Bacon Act, when the contract will be performed in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands – unless; the contract will be subject to the Walsh-Healey Public Contracts Act, which contains a separate prohibition on the use of convict labor; the supplies or services are to be purchased from Federal Prison Industries, Inc.; or the acquisition involves the purchase, from any State prison, of finished supplies that maybe secured in the open market or from existing stocks, as distinguished from supplies requiring special fabrication.)
31. 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation (May 2018) (a) through (d) of this clause are incorporated into subcontract if subcontract requires or involves the employment of laborers and mechanics. A subcontractor must include same portion of this clause in any lower-tier subcontracts.)
32. 52.222-17 Nondisplacement of Qualified Workers (May 2014)
33. 52.222-21 Prohibition of Segregated Facilities (April 2015)
34. 52.222-26 Equal Opportunity (April 2015) (Unless subcontract is exempt from all requirements of Executive Order 11246.)
35. 52.222-26 Equal Opportunity (Sept 2016) (E.O. 11246)
36. 52.222-35 Equal Opportunity for Veterans (October 2015) (Incorporated into subcontract if subcontract value equals or exceeds \$150,000 and neither Executive Order 11246 nor the Department of Labor rules provide an exemption.)
37. 52.222-35 Equal Opportunity for Veterans (July 2014) (If subcontract value equals or exceeds \$100,000 and subcontract not exempted by rules, regulations, or orders of the Secretary of Labor.)
38. 52.222-35 Equal Opportunity for Veterans (June 2020) (If subcontract value equals or exceeds \$150,000 and subcontract not exempted by rules, regulations, Executive Order 11246, or orders of the Secretary of Labor.)
39. 52.222-36 Equal Opportunity for Workers With Disabilities (July 2014) (Incorporated into subcontract if the subcontract value equals or exceeds \$15,000, and no DOL exemption applies.)
40. 52.222-36 Equal Opportunity for Workers with Disabilities (June 2020) (If subcontract value exceeds \$15,000 and subcontract not exempted by rules, regulations, or orders of the Secretary of Labor.)
41. 52.222-37 Employment Reports on Veterans (FEB 2016) (Incorporated into subcontract if FAR 52.222-35 is flowed down, the value of the subcontract equals or exceeds \$150,000, and Executive Order 11246 and DOL rules provide no exemption.)
42. 52.222-37 Employment Reports on Veterans (July 2014) (If subcontract value equals or exceeds \$100,000 and subcontract not exempted by rules, regulations, or orders of the Secretary of Labor.)
43. 52.222-37 Employment Reports on Veterans (June 2020) (If subcontract value equals or exceeds \$150,000 and subcontract not exempted by rules, regulations, Executive Order 11246, or orders of the Secretary of Labor.)

44. 52.222-37 Employment Reports on Veterans (Oct 2015) (Incorporated into subcontract if FAR 52.222-35 is flowed down, the value of the subcontract equals or exceeds \$150,000, and Executive Order 11246 and DOL rules provide no exemption.)
45. 52.222-40 Notification of Employee Rights under the National Labor Relations Act (December 2010) (E.O. 13496),if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.
46. 52.222-41 Service Contract Labor Standards (May 2014)
47. 52.222-50 Combating Trafficking in Persons (February 2009) (Use clause with Alternate I (August 2007) language if subcontract will be performed outside the United States.)
48. 52.222-50 Combating Trafficking in Persons (March 2015) (Incorporated into subcontracts that are for supplies (other than commercially off-the-shelf items) that are acquired outside the United States or for services performed outside the United States, and the subcontract has an estimated value that exceeds \$500,000.)
49. 52.222-50 Combating Trafficking in Persons (Oct 2020) (If subcontract value equals or exceeds \$150,000 and subcontract not exempted by rules, regulations, Executive Order 11246, or orders of the Secretary of Labor.)
50. 52.222-53 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services - Requirements (MAY 2014) (41 U.S.C. chapter 67).
51. 52.222-54 Employment Eligibility Verification (August 2013) (If subcontract exceeds \$3,000 and includes work performed in the United States excluding commercial services that are part of the purchase of a COTS item as described in the clause.)
52. 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (October 2015) (Incorporated into any subcontract valued over \$3,500 (but excluding Subcontracts performed outside the United States or that are only for commercial services that are part of the purchase of a commercially available off-the-shelf item.)
53. 52.222-55 Minimum Wages Under Executive Order 13658 (DEC 2015) If flow down is required in accordance with paragraph (k) of FAR clause 52.222-55.
54. 52.222-62 Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706) if flow down is required in accordance with paragraph (m) of FAR clause 52.222-62.
55. 52.223-6 Drug-Free Workplace (May 2001) (Incorporated into all Subcontracts except: if the value of the Subcontract is at or below the simplified acquisition threshold of \$100,000; if the Subcontract shall be performed outside the United States and its outlying areas or any part of a contract performed outside the United States and its outlying areas; if the contract is on behalf of a law enforcement agency and the agency's head or designee determines that application of this clause would be inappropriate in connection with the agency's undercover operations; or where application would be inconsistent with the international obligations of the United States or the laws and regulations of a foreign country; but the requirements of this subpart apply to all contracts of any value awarded to an individual.)
56. 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (August 2011) (Subcontracts that exceed the micro-purchase threshold, which is currently \$3,000 for most contracts.) 52.224-1 Privacy Act Notification (Apr 1984)
57. 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (Jun 2020) (Incorporated into any subcontract providing non-commercial and commercial services valued over

the micro-purchase threshold as defined in FAR 2.101 on the date of the subcontract award, which is currently \$10,000.)

58. 52.223-79 Ensuring Adequate Covid-19 Safety Protocols for Federal Contractors (Deviation 2021-00009) (Oct 2021) (Incorporated into all subcontracts for services (including construction) performed in whole or in part within the United States or its outlying areas at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.)
59. 52.224-3 Privacy Training (Jan 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).
60. 52.225-26 Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Note).
61. 52.225-26 Contractors Performing Private Security Functions Outside the United States (July 2013) (Incorporated into subcontract for non-DoD agency if performance is in an area of combat operations or other significant military operations).
62. 52.226-6 Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
63. 52.227-1 Authorization and Consent (June 2020) (Incorporated into subcontract if it is expected to exceed the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award. However omission of this clause from subcontract does not affect this authorization and consent.)
64. 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (June 2020) (Incorporated into subcontract if it is expected to exceed the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award.)
65. 52.232-2 Assignment of Claims (January 1986) (Incorporated into all Subcontracts expected to exceed the micro-purchase threshold of \$2,500, or \$2,000 if for construction subject to the Davis-Bacon Act, when the contract will be performed in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands – unless the Subcontract will prohibit the assignment of claims.)
66. 52.232-40 Providing Accelerated Payments to Small Business Subcontractors (December 2013) (If required in accordance with paragraph (c) of 52.232-40.)
69. 52.242-1 Notice of Intent to Disallow Costs (April 1984) (Incorporated into all Subcontracts when a cost-reimbursement contract, a fixed-price incentive contract, or a contract providing for price redetermination is contemplated.)
70. 52.244-5 Competition in Subcontracting (December 1996)
71. 52.244-6 Subcontracts for Commercial Items (October 2014)
72. 52.244-6 Subcontracts for Commercial Items (October 2015) (Requires Subcontractor to include the listed FAR clauses in Subcontracts with commercial item/service vendors and to include the clause in any Subcontracts with lower-tier non-commercial item/service subcontractors.)
73. 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (NOV 2017) (Requires Supplier to include the listed FAR clauses in Subcontracts with commercial item/service vendors and to include the clause in any Subcontracts with lower-tier non-commercial item/service Suppliers.)
74. 52.244-6 Subcontracts for Commercial Items (October 2020)

75. 52.245-5 Government Property (Cost Reimbursement, Time-And-Material, or Labor-Hour Contracts) (May 2004) (Incorporated into all Subcontracts when a cost-reimbursement, time-and-material, or labor-hour contract is contemplated. If the contract is for basis or applied research at an institution of higher learning or a nonprofit organization whose primary purpose is scientific research, the contracting officer shall use the clause with its Alternate I. The contracting officer may use FAR 52.245-4 where the Subcontract contemplates a fixed-price, time-and-material, or labor-hour contract and the acquisition cost of all Government-furnished property to be involved in the contract is \$100,000 or less; unless a contract with an education or nonprofit organization is contemplated.)
76. 52.247-63 Preference for U.S. Flag Carriers (June 2003) (Incorporated into subcontract if subcontract may involve international air transportation of personnel or property.)
77. 52.247-64 Preference for Privately Owned US-Flag Commercial Vessels (February 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631) if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

#### **FEHBAR Clause      48 CFR §**

1652.203-70 MISLEADING, DECEPTIVE OR UNFAIR ADVERTISING (JAN 1991) (Incorporated into subcontract if the subcontractor is an underwriter or an entity directly involved in the preparation or distribution of advertising materials. Substitute “Contractor” or another appropriate reference for the term “Carrier”.)

1652.204-74 Large provider agreements (October 2005) (Contracts with Large Providers as described under 1604.7201 and 1604.7202).

1652.222-70 Notice of Significant Events (July 2005) (Incorporated into subcontract or subcontract Modification if the amount of the subcontract or modification to be charged to FEP will equal or exceed the Truth in Negotiation Act (TINA) threshold and 25% of the total subcontract cost.)

1652.246-70 FEHB Inspection (July 2005) (If subcontract is for claims payment, underwriting, and/or administrative services. Substitute “subcontractor” for “carrier” and “contractor.” Substitute “contracting officer and plan” for “contracting officer.” Paragraph (b) of the clause does not apply if subcontract is subject to FAR 52.215-2.)

#### **Clause 45 CFR § 155 and 156**

Delegated Entity (as defined by 45 C.F.R. § 156.20) expressly agrees to comply with all applicable laws and regulations, including but not limited to the provisions of 45 C.F.R. Parts 155 and 156, to the extent relevant, in performing or assisting in the performance of the duties to members of a Qualified Health Plan (“QHP”) and obligations set forth in this Agreement, and

Grant access to its books, contracts, computers, or other electronic systems (including medical records and documentation), relating to such downstream entity’s compliance with applicable provisions under 45 C.F.R. Parts 155 and 156 in connection with the duties and obligations set forth in this Agreement, to HHS

and its Office of Inspector General (or their designees), for the duration of the period in which this Agreement is effective, and for a minimum of ten (10) years from the date this Agreement terminates.

**OFCCP Clauses            41 CFR §**

41 C.F.R. 60-300.5(a) – Equal Opportunity for VEVRAA Protected Veterans (March 24, 2014) **This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60–300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.** (This reference, including the bolded text that follows, must be incorporated into all FEP subcontracts where the work is performed within the United States and the FEP subcontract is valued over \$100,000 (including indefinite quantity contracts unless BCBSMS has reason to believe that annual costs for the contract will not exceed \$100,000)).

41 C.F.R. 60-741.5 Equal Opportunity for Workers with Disabilities **This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60–741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.** (This reference, including the bolded text that follows, must be incorporated into all FEP subcontracts where the work is performed within the United States and the FEB subcontract is valued over \$10,000 (including indefinite quantity contracts unless BCBSMS has reason to believe the annual costs for the contract will not exceed \$10,000)).

**EEO Clause                41 CFR §**

**[If applicable,] This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a) (as amended by E.O. 13665 regarding pay transparency), 60-300.5(a) 60-741.5(a) and 29 CFR 471. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.**

**Mandatory FEP Contract Clauses**



Section 1.30 HEALTH INFORMATION TECHNOLOGY PRIVACY AND SECURITY (January 2016). The change incorporates the January 2016 version of the clause (Updated January 2015). (Although this clause does not appear in CS 1039 as a mandatory flow-down, it nonetheless imposes obligations on Plans to ensure that all subcontractor, large provider and vendor websites or web portals link to the subcontractor's, large provider's, or vendor's notice of privacy practices and/or privacy policies and that such privacy practices and/or policies are displayed at the bottom, or prominently displayed elsewhere, on the website or portal.)

CS 1039

Section 1.9(a) PLAN PERFORMANCE – EXPERIENCE RATED FFS CONTRACTS DETECTION OF FRAUD AND ABUSE (January 2015). (Although this clause does not appear CS 1039 as a mandatory flow-down, it nonetheless imposes obligations on Plans to provide annual reports on the costs and benefits of the Plan's fraud and abuse control program – including detection and elimination of fraud and abuse by, among others, subcontractors. Thus we have included it under the mandatory flow-down clauses.) The change incorporates the January 2015 version of the clause (updated from January 2013), which updates the Fraud, Waste, and Abuse information reported annually by the Plans, which includes, among other things, information from subcontractors.

#### **42 CFR Parts 422 and 423**

Participating Supplier agree with respect to Delegated Services provided under the Agreement:

1. Participating Eligible Purchaser maintains ultimate responsibility for adhering to and otherwise complying with all terms and conditions of its contract with CMS and may only delegate activities or functions to Supplier in a manner consistent with Medicare regulations. [42 C.F.R. §§422.504(i)(1), 422.504(i)(3)(ii), 423.505(i)(1), and 423.505(i)(3)(ii)]
2. Supplier will perform the following Delegated Services and reporting responsibilities as specified: [42 C.F.R. §§ 422.504(i)(4)(i) and 423.505(i)(4)(i)]:  
  
External medical reviews for Participating Eligible Purchaser's Medicare Advantage members upon the terms and conditions as set forth in the EPA and the Master Agreement.
3. All Delegated Services provided on behalf of Participating Eligible Purchaser must be consistent and comply with BlueCross' contract with CMS. In the event that either CMS or Participating Eligible Purchaser determines that Supplier has not performed satisfactorily under the contract, Participating Eligible Purchaser reserves the right to revoke any Delegated Services and/or reporting requirements. [42 C.F.R. §§ 422.504(i)(4)(ii) and 423.505(i)(4)(ii)]
4. Participating Eligible Purchaser will monitor Vendor's performance on an ongoing basis. [42 C.F.R. §§ 422.504(i)(4)(iii) and 423.505(i)(4)(iii)]
5. The credentialing process will be reviewed and approved by Participating Eligible Purchaser and Participating Eligible Purchaser will audit Vendor's credentialing process on an ongoing basis. [42 C.F.R. § 422.504(i)(4)]
6. Participating Eligible Purchaser is delegating the selection of providers, contractors, or

subcontractors to Vendor; therefore, Participating Eligible Purchaser retains the right to approve, suspend, or terminate any such arrangement. [42 C.F.R. §§ 422.504(i)(5) and 423.505(i)(5)]

7. HHS, the Comptroller General, or their designees have the right to audit, evaluate, and inspect any pertinent information for any particular contract period, including, but not limited to, any books, contracts, computer or other electronic systems (including medical records and documentation of the first tier, downstream, and entities related to CMS' contract with Participating Eligible Purchaser through 10 years from the final date of the contract period of the contract entered into between CMS and the Participating Eligible Purchaser or from the date of completion of any audit, whichever is later. [42 C.F.R. §§ 422.504(i)(2)(i),(ii),(iii), 422.504(i)(2)(iv), 423.505(i)(2)(i), and 423.505(i)(2)(iv)]
8. HHS, the Comptroller General, or their designees have the right to audit, evaluate, collect, and inspect any records covered under Paragraph Seven (7) above directly from any first tier, downstream or related entity. For records subject to this review, except in exceptional circumstances, CMS will provide notification to Participating Eligible Purchaser that a direct request for information has been initiated. [42 C.F.R. §§ 422.504(i)(2)(ii), 422.504(i)(2)(iii), 423.505(i)(2)(ii), and 423.505(i)(2)(iii)]
9. Supplier shall ensure that payments are not made to individuals and entities included on the CMS preclusion list, as defined in 42 C.F.R. § 422.2, and shall include in provider agreements, if contracting with providers on behalf of BlueCross, that the provider will not be eligible for payment and will be prohibited from pursuing payment from Participating Eligible Purchaser enrollees after the expiration of the 60-day period specified in 42 C.F.R. § 422.222. The provider will hold financial liability for services, items, and drugs that are furnished, ordered or prescribed after the expiration of such 60-day expiration period. [42 C.F.R. §§ 422.504(g)(1)(iv), 422.504(i)(2)(v)]
10. Supplier will comply with the confidentiality and enrollee record accuracy requirements, including: (1) abiding by all Federal and State laws regarding confidentiality and disclosure of medical records, or other health and enrollment information, (2) ensuring that medical information is released only in accordance with applicable Federal or State law, or pursuant to court orders or subpoenas, (3) maintaining the records and information in an accurate and timely manner, and (4) ensuring timely access by enrollees to the records and information that pertain to them. [42 C.F.R. §§ 422.504(a)(13), 422.118, 423.136]
11. Supplier will not hold enrollees liable for payment of any fees that are the legal obligation of BlueCross. [42 C.F.R. §§ 422.504(i)(3)(i), 422.504(g)(1)(i), 423.505(i)(3)(i), and 423.505(g)(1)(i)]
12. For all enrollees eligible for both Medicare and Medicaid, enrollees will not be held liable for Medicare Part A and B cost sharing when the State is responsible for paying such amounts. Providers will be informed of Medicare and Medicaid benefits and rules for enrollees eligible for Medicare and Medicaid. Neither Participating Eligible Purchaser nor Supplier may impose cost-sharing that exceeds the amount of cost-sharing that would be permitted with respect to the individual under Title XIX if the individual were not enrolled in such a plan. Providers will: (1) accept the MA plan payment as payment in full, or (2) bill the appropriate State source. [42 C.F.R. §§ 422.504(i)(3)(i) and 422.504(g)(1)(iii)]
13. All Delegated Services performed by Supplier will be consistent and comply with BlueCross' contractual obligations. [42 C.F.R. §§ 422.504(i)(3)(iii) and 423.505(i)(3)(iii)]

14. Supplier and any related entity, contractor or subcontractor will comply with all applicable Medicare laws, regulations, and CMS instructions. [42 C.F.R. §§ 422.504(i)(4)(v), 423.505(i)(3)(iv), and 423.505(i)(4)(iv)]
15. Supplier will adopt and implement an effective compliance program which must include measures that prevent, detect and correct non-compliance with CMS program requirements as well as measures that prevent, detect and correct fraud, waste and abuse. Supplier will provide Participating Eligible Purchaser with attestations and compliance reporting to confirm performance of required compliance training and screening activities. [42 C.F.R. §§ 422.503(b)(4)(vi)(A–G) and 423.504(b)(4)(vi)(A–G)]
16. Supplier represents that it is not excluded or precluded from federal health program participation. Further, Supplier shall review the Department of Health and Human Services Office of the Inspector General (OIG) List of Excluded Individuals and Entities (LEIE list) and General Services Administration (GSA) System for Award Management (SAM) prior to the hiring or contracting any new employee, temporary employee, volunteer, consultant, governing board member, or subcontractor and monthly thereafter to ensure that none of these persons or entities are excluded from federal health program participation. Supplier shall notify Participating Eligible Purchaser immediately of any excluded individual or entity assigned to perform delegated services and remove such individual or entity from performing such services. [42 C.F.R. §§422.752(a)(8) and 423.752(a)(6)]
17. Payments made to Supplier for Delegated Services are made, in whole or in part, from federal funds, and subject Supplier to all laws applicable to the individuals or entities who receive federal funds, including the False Claims Act (32 USC 3729, et. seq.), the Anti-Kickback Statute (Section 1128B(b) of the Social Security Act), Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act, and the Rehabilitation Act of 1973.
18. Supplier agrees that, in providing services pursuant to this Addendum, Supplier shall comply with Title VI of the Civil Rights of 1964, the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Americans With Disabilities Act, and all related implementing regulations. Supplier agrees that it will not (i) discriminate against any Medicare Member on the basis of race, color, religion, sex, national origin, age, health status, participation in any government program (including Medicare), source of payment, participation in a health plan, marital status or physical or mental handicap nor (ii) contract with any Downstream Entity, which discriminates against any Medicare Member on such bases.
19. Supplier shall not, in connection with any functions, activities or services related to the Agreement or this Addendum directly or indirectly contract with any person or entity that undertakes any functions, activities or services, including, without limitation, storage of Medicare Member information, outside of the United States of America or its territories (hereinafter “Offshore”) without the prior written consent of BlueCross.
20. Supplier agrees to comply with applicable CMS reporting requirements, including those specified at 42 C.F.R. §§ 422.504(f) (disclosure of information) and 422.516 (informational data). To the extent required in the Master Agreement or by applicable law, Supplier’s CEO or CFO, or an individual delegated the authority to sign on behalf of one of these officers and who reports directly to the officer, shall certify, based on that individual’s best knowledge, information and belief, the

accuracy, completeness, and truthfulness of any data and information Supplier provides to Participating Eligible Purchaser and shall acknowledge that the data or information may be used by Participating Eligible Purchaser for the purpose of obtaining federal funds.

## **MEDICARE ADVANTAGE REGULATORY REQUIREMENTS**

### **VENDOR – DELEGATED ENTITY**

**THIS MEDICARE ADVANTAGE REGULATORY REQUIREMENTS APPENDIX** (“Appendix”) supplements and is made part of the External Review Services Agreement (“Vendor”).

### **SECTION 1 APPLICABILITY**

This Appendix applies to the administrative services performed and products provided by physician contractors (“Vendor”) pursuant to the Agreement between Company and Medicare Advantage Organizations (“MA Organization”) relating to such services and products performed on behalf of a Medicare Advantage Benefit Plans.

### **SECTION 2 DEFINITIONS**

For purposes of this Appendix, the following terms shall have the meanings set forth below.

- 2.1 **Benefit Plan:** A certificate of coverage, summary plan description, or other document or agreement, whether delivered in paper, electronic, or other format, under which a Payer is obligated to provide coverage of Covered Services for a Customer.
- 2.2 **CMS Contract:** A contract between the Centers for Medicare & Medicaid Services (“CMS”) and a Medicare Advantage Organization for the provision of Medicare benefits pursuant to the Medicare Advantage Program under Title XVIII, Part C of the Social Security Act.
- 2.3 **Covered Service:** A health care service or product for which a Customer is entitled to receive coverage from a Payer, pursuant to the terms of the Customer’s Benefit Plan with that Payer.
- 2.4 **Customer:** A person eligible and enrolled to receive coverage from a Payer for Covered Services.
- 2.5 **Medicare Advantage Benefit Plans:** Benefit Plans sponsored, issued or administered by a Medicare Advantage Organization as part of the Medicare Advantage program or as part of the Medicare Advantage program together with the Prescription Drug program under Title XVIII, Part C and Part D, respectively, of the Social Security Act (as those program names may change from time to time).
- 2.6 **Medicare Advantage Customer or MA Customer:** A Customer eligible for and enrolled in a Medicare Advantage Benefit Plan that is covered under the Agreement.

2.7 Medicare Advantage Organization or MA Organization: For purposes of this Appendix, MA Organization is: (a) UnitedHealthcare Insurance Company or one of its affiliates (“United”) that has entered into a contract with CMS for the purpose of offering a Benefit Plan to MA Customers; or (b) Payer.

2.8 Payer: An entity obligated to a Customer to provide reimbursement for Covered Services under the Customer’s Benefit Plan.

### **SECTION 3 DELEGATED ACTIVITIES**

3.1 MA Organization Accountability; Delegated Activities. Vendor acknowledges and agrees that MA Organization oversees and is accountable to CMS for any functions and responsibilities described in the CMS Contract and applicable Medicare Advantage regulations, including those that MA Organization has delegated to Vendor under the Agreement. In addition to the other provisions of this Appendix, the following shall apply with respect to any functions and responsibilities under the CMS Contract that MA Organization has delegated to Vendor pursuant to the Agreement:

(a) Vendor shall perform those delegated activities specified in the Agreement, if any, and shall comply with any reporting responsibilities as set forth in the Agreement.

(e) Vendor acknowledges that MA Organization shall monitor Vendor’s performance of delegated activities on an ongoing basis. Such monitoring activities may include site visits and periodic audits. If CMS or MA Organization determines that Vendor has not performed satisfactorily, or has failed to meet all reporting and disclosure requirements in a timely manner, MA Organization may revoke any or all of the delegated activities and reporting requirements. Vendor shall cooperate with MA Organization regarding the transition of any delegated activities or reporting requirements that have been revoked by MA Organization.

### **SECTION 4**

#### **VENDOR REQUIREMENTS**

4.1 Customer Protection. Vendor agrees that in no event including, but not limited to, non-payment by MA Organization, insolvency of MA Organization, or breach by United of the Agreement, shall Vendor bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against any MA Customer or person (other than MA Organization) acting on behalf of the MA Customer for any fees that are the legal obligation of MA Organization under the CMS Contract.

4.2 Eligibility. Vendor agrees to immediately notify Company in the event Vendor is or becomes excluded from participation in any federal health care program under Section 1128 or 1128A of the Social Security Act.

4.3 Laws. Vendor shall comply with all applicable federal and Medicare laws, regulations, and CMS instructions, including but not limited to: (a) federal laws and regulations designed to prevent or ameliorate fraud, waste, and abuse, including but not limited to, applicable provisions of federal criminal law, the False Claims Act (31 U.S.C. §3729 et seq.), and the anti-kickback statute (§1128B of the Social Security Act); and (b) HIPAA administrative simplification rules at 45 CFR Parts 160, 162, and 164.

4.4 Federal Funds. Vendor acknowledges and agrees that MA Organization receives federal payments under the CMS Contract and that payments Vendor receives from or on behalf of MA Organization are, in whole or in part, from federal funds. Vendor is therefore subject to certain laws that are applicable to individuals and entities receiving federal funds.

4.5 CMS Contract. Vendor shall perform the services and provide the products set forth in the Agreement in a manner consistent and compliant with MA Organization's contractual obligations under the CMS Contract.

4.6 Records.

(a) Privacy and Confidentiality; Customer Access. Vendor shall safeguard MA Customer privacy and confidentiality, including, but not limited to, the privacy and confidentiality of any information that identifies a particular MA Customer, and shall comply with all federal and state laws regarding confidentiality and disclosure of medical records or other health and enrollment information, including the requirements established by MA Organization and the Medicare Advantage program, as applicable.

(b) Retention. Vendor shall maintain records and information related to the services performed and products provided by Vendor under the Agreement, in an accurate and timely manner. Vendor shall maintain such records for the longer of the following periods:

(i) in the case of records containing information related to the medical loss ratio information reported to CMS by the MA Organization, including, for example, information related to incurred claims and quality improvement activities, at least ten (10) years from the date such medical loss ratio information is reported to CMS by the MA Organization, or

(ii) in the case of all other records, at least ten (10) years from the final date of the CMS Contract period in effect at the time the records were created, or such longer period as required by law.

(c) Government Access to Records. Vendor acknowledges and agrees that the U.S. Department of Health and Human Services, the Comptroller General, or their designees shall have the right (directly or through the MA Organization) to audit, evaluate, collect, and inspect any pertinent books, contracts, computer or other electronic systems (including medical records and documentation), and other records and information of Vendor related to the CMS Contract. Vendor shall make available to its premises, physical facilities, and equipment, records relating to the services performed and the products provided under the Agreement and any additional relevant information CMS may require. This right shall extend through the longer of the time periods identified in subsection 4.6(b)(i) and (ii), or ten (10) years from date of completion of any audit, whichever is later in time.

(d) MA Organization Access to Records. Vendor shall grant MA Organization or its designees such audit, evaluation, collection and inspection rights identified in subsection 4.6(c) as are necessary for MA Organization to comply with its obligations under the CMS Contract. Whenever possible, MA Organization will give Vendor reasonable notice of the need for such audit, evaluation, collection, or inspection, and will conduct such audit, evaluation, collection, or inspection at a reasonable time and place.

4.7 Subcontracts. If Vendor has any arrangements, in accordance with the terms of the Agreement, with affiliates, subsidiaries, or any other subcontractors, directly or through another person or entity, to perform any of the services or provide any products Vendor is obligated to perform or provide under the

Agreement that are the subject of this Appendix, Vendor shall ensure that all such arrangements are in writing, duly executed, and include all the terms contained in this Appendix. Vendor shall provide proof of such to MA Organization upon request. In addition, Vendor agrees to oversee and monitor, on an ongoing basis, the services Vendor has subcontracted to another person or entity. Vendor further agrees to promptly amend its agreements with such subcontractors, in a manner consistent with the changes made to this Appendix by MA Organization, to meet any additional CMS requirements that may apply to the performance of the services or the provision of the products.

4.8 Offshoring. All services provided by Vendor pursuant to the Agreement that are subject to this Appendix and that involve MA Customer's protected health information ("PHI") must be performed within the United States, the District of Columbia, or the United States.

### **SECTION 5 OTHER**

5.1 Regulatory Amendment. MA Organization or Company may unilaterally amend this Appendix to comply with applicable laws and regulations and the requirements of applicable regulatory authorities including, but not limited to, CMS. MA Organization shall provide written or electronic notice to Vendor of such amendment and its effective date. Unless such laws, regulations, or regulatory authority(ies) direct otherwise, the signature of Vendor will not be required in order for the amendment to take effect.

**Maryland**

The following additional terms shall apply to Vendor subcontractors performing services in Maryland.

**A. DEFINITIONS.** To the extent that any definition, term, condition or provision contained in this Addendum is inconsistent with or in conflict with any definition, term, condition or provision set forth in the Agreement, the definitions, terms, conditions and provisions set forth in this Addendum shall control. Capitalized terms used in this **Addendum** that are not otherwise defined herein or in the Agreement shall have the same meaning as defined in 42 C.F.R. Part 438.

1. Administrative Services Organization: an organization that manages designated administrative functions while the entity contracting the organization retains the risks and liabilities.
2. Maryland Department of Health (“Department”): The Maryland Department of Health, as defined in COMAR 10.09.36.01, or its authorized agents acting on behalf of the Department.
3. Managed Care Organization (MCO): health care organizations that provide services to Medicaid participants in Maryland. In this Addendum, MCO refers to CareFirst Community Partners, Inc.
4. Enrollee: Medicaid recipient who is enrolled in a managed care organization.
5. Network Provider: a provider that is a member of the MCO’s provider panel. A network provider is not a subcontractor on the sole basis of its network provider agreement with the MCO.
6. Potential Enrollee: a recipient who is authorized by the Department to enroll in a Managed Care Organization.
7. Program: the Medical Assistance Program.
8. Subcontract: a written agreement between an MCO and a third party, under which the third party performs any one or more of the MCO’s obligations required by the Department, as defined in COMAR 10.67.01.01B(171).
9. Subcontractor: any individual or entity that has a contract with an MCO that relates directly or indirectly to the performance of the MCO’s obligations under this HealthChoice Managed Care Organization Agreement between MCO and the Department, as defined in COMAR 10.67.01.01B(172).

**B. REQUIRED PROVISIONS.** Vendor agrees to the following:

1. MCO maintains ultimate responsibility for adhering to and otherwise complying with all terms and conditions of its contract with Department and may only delegate activities or functions to Provider in a manner consistent with Medicaid regulations.
2. Vendor is legally qualified to furnish the services provided for in the Agreement.
3. Vendor will comply with the confidentiality and Enrollees record accuracy requirements, including: (1) abiding by all Federal and State laws regarding confidentiality and disclosure of medical records, or other health and enrollment information, (2) ensuring that medical information is released only in accordance with applicable Federal or State law, or pursuant to court orders or subpoenas, (3) maintaining the records and information in an accurate and timely manner, and (4) ensuring timely access by Enrollees to the records and information that pertain to them.
4. Vendor shall implement procedures that are designed to detect and prevent fraud, waste and abuse set forth in 42 CFR 438.608 and COMAR 10.67.07.
5. Vendor shall comply with all State and federal requirements regarding audit, inspection and evaluation. Vendor shall permit the Department, the Maryland Insurance Administration, and/or DHHS, or any of their respective designees, as required by 42 CFR 438.6(h), to:



- a. Evaluate the quality, appropriateness and timeliness of services performed through inspection or other means, including accessing the MCO and its subcontractor's facilities using enrollment cards and identifies established in the manner specified by the Department; and
  - b. Inspect and audit any financial records, including but not limited reimbursement rates.
6. Vendor shall be aware of the provisions of the Social Security Act Section 1128 B (Criminal Penalties for Acts Involving Federal Health Care Programs.)
7. Any services or other activity performed in accordance with a contract or written agreement by Vendor shall be consistent and comply with the MCO's contractual obligations. Vendor is subject to all of the requirements to which the MCO is subject under its contract with the Department and pursuant to Department regulation.
8. MCO will monitor Vendor's performance on an ongoing basis, including but not limited to, the areas of Enrollee complaints, access issues, quality assurance activities, record keeping and reporting requirements.
9. Vendor shall release to the MCO and to the Department, upon request, any information necessary for the MCO to perform any of its contractual and regulatory obligations under its contract with the Department, including, not limited to, its records, reporting and quality assurance duties.
10. Vendor shall furnish to MCO copies of Vendor's medical records pertaining to the MCO's Enrollees, upon request, for transfer to a subsequent provider in the event of a termination of the subcontract.
11. No termination of the Agreement shall be effective without the prior written notice to the Department.
12. Vendor will look solely to the MCO for compensation for covered services provided to the MCO's Enrollees under the Agreement.
13. No assignment of the Agreement by the subcontractor shall be effective without the prior written notice to the Department.
14. If the Vendor is authorized by the MCO to make referrals, Vendor must use the uniform consultation referral form adopted by the Maryland Insurance Administration at COMAR 31.10.12.06.
15. Any provision stated herein shall supersede and be controlling over any conflicting provision in the Agreement.
16. MCO has the right to audit Vendor pursuant to 42 CFR Section 438.230(c)(3)(i) for ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later.
17. Vendor is subject to a grievance and appeal system consistent with the requirements of COMAR 10.67.09.
18. Vendor shall maintain general liability and medical malpractice insurance in the minimum amounts of \$1,000,000 per loss and \$3,000,000 in the aggregate. Vendor shall submit evidence of its professional liability coverage annually to the MCO.
19. Vendor, as well as any contractor or subcontractor will comply with all applicable Maryland Medicaid laws, regulations, and Department instructions, including but not limited to all requirements concerning audits, and inspections by the Department and other government agencies that are imposed upon the MCO by statute or regulation, or by its contract with the Department.
20. Vendor is not debarred, suspended or otherwise excluded from: (a) participating in procurement activities under the Federal Acquisition Regulations; or (b) participating in non-procurement activities under Executive Order Number 12549, 3 CFR 189 (1986).
21. Vendor shall review the DHHS Office of Inspector General (OIG) List of Excluded Individuals/Entities (LEIE) and the GSA System for Award Management lists (GSA List) prior to the hiring or contracting

- of any new subcontractor, employee, temporary employee, volunteer, consultant, governing body member, , and monthly thereafter, to ensure that none of these persons or entities are excluded or become excluded from participation in federal health care programs. If any such person shall appear on the OIG LEIE or the GSA List as being excluded from participation in federal health care programs, Vendor shall notify MCO within five (5) days of Vendor becoming aware of the individual or entity's exclusion. Any such person shall be prohibited from providing Services to MCO.
- 22.** Vendor will not receive, process, transfer, store, or access Enrollee information in any form outside the United States of America, without prior written consent from MCO. If consent is provided and off-shoring permitted, Vendor agrees to comply with Department and MCO's reasonable requirements for reporting, auditing, and monitoring, including, but not limited to, those set forth in this Addendum. Vendor shall notify MCO no less than 45 days prior to the effective date of any agreement or arrangement to perform any Services in a location outside of the United States.
- 23.** MCO may revoke any activity or obligation delegated to Vendor in the event that Department or MCO determines that Vendor has not performed satisfactorily, including for failure to implement a corrective action plan or quality improvement plan.